

## New DOL Fact Sheet takes on rising workplace mental health issues



Miriam L. Rosen | Monday, June 13, 2022

Recent reports from both government agencies and human resources experts confirm what employers already know: challenging times are taking a toll on employees' mental health. With employers focused on how to properly address these issues in the workplace, the DOL has stepped in with two new guidance documents: [Fact Sheet #280: Mental Health Conditions and the FMLA](#) and [Frequently Asked Questions on the FMLA's mental health provisions](#).

### **Rising workplace mental health claims**

The EEOC's recent report on fiscal year 2021 charges of discrimination indicates that 37.2% of charges included disability-related claims under the ADA. Of those ADA claims, nearly 30% alleged discrimination based on mental health conditions. In contrast, in 2011, mental health claims accounted for 20% of ADA charges. In particular, anxiety claims have more than doubled from 5.3% (1,362) in 2011 to 11.6% (2,639) of all ADA claims in 2021.

The increase in mental health conditions takes a tangible financial toll on employers. A recent study lead by the World Health Organization (WHO) notes that depression and anxiety have a significant economic impact; the estimated cost to the global economy is \$1 trillion per year in lost productivity. The WHO study also found that workplaces that support employees with mental disorders are more likely to reduce absenteeism, increase productivity and benefit from associated economic gains.

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### The DOL Fact Sheet provides guidance

Many employers have responded to what they are seeing in the workplace by adding employee assistance programs and other resources to help employees deal with these conditions. Yet, employers often struggle with how to handle employee time off and leave requests associated with mental health conditions. The DOL has now offered employers guidance in its new [Fact Sheet # 280](#) and FAQ document on when mental health conditions are covered by the FMLA. The documents also offer practical examples of situations in which the FMLA would provide job protected leave for mental health conditions experienced by employees and covered family members.

The Fact Sheet reminds employers that FMLA leave for a mental health condition may be available for the employee's own condition or to provide care for covered family members who are unable to work or perform other regular daily activities because of a mental health condition that qualifies as serious health condition.

Regarding an employee's own condition, the Fact Sheet notes, for example, that an eligible employee who is occasionally unable to work due to a flare up of their own severe anxiety as well as the need to attend regularly scheduled doctor appointments for the condition may take up FMLA leave for their own serious health condition.

In another example, the Fact Sheet addresses leave for a covered family member:

*Wyatt uses one day of FMLA leave to travel to an inpatient facility and attend an after-care meeting for his fifteen-year-old son who has completed a 60-day inpatient drug rehabilitation treatment program.*

The Fact Sheet also addresses another FMLA leave issue that often challenges employers: how to handle leave for an adult child with a mental health condition. The Fact Sheet notes: “[a] parent may use FMLA leave to care for a child 18 years of age or older who is in need of care because of a serious health condition, if the individual is incapable of self-care because of a mental or physical disability. For practical purposes, some mental health conditions may satisfy both the definition of “disability” and the definition of “serious health condition,” even though the statutory tests are different.”

The DOL then provides this example:

*Anastasia uses FMLA leave to care for her daughter, Alex. Alex is 24 years old and was recently released from several days of inpatient treatment for a mental health condition. She is unable to work or go to school and needs help with cooking, cleaning, shopping, and other daily activities as a result of the condition.*

### Employment Lessons Learned

Employers should review the Fact Sheet and FAQ document to understand their FMLA compliance obligations. Beyond required compliance, it makes good business sense to support employees' mental health to ensure a successful and productive workforce. Best practices that protect and promote mental health in the workplace include:

- Provide a supportive culture
- Implement and enforce health and safety policies and practices, including identifying signs of distress and substance abuse
- Train managers how to respond to requests for assistance and leave
- Offer an Employee Assistance Program (EAP) and make it readily accessible to employees and covered

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family members

The McDonald Hopkins Labor & Employment Team is available to assist employers with compliance obligations and manager training.

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